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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 90)
of the Commission's Rules)
Governing Extended)
Implementation Periods)

PR Docket No. 92-210
RM-7974

COMMENTS
OF THE
COUNCIL OF INDEPENDENT COMMUNICATION SUPPLIERS

Date: November 30, 1992

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S U M M A R Y

The Council of Independent Communication Suppliers ("CICS") supports the Federal Communications Commission's proposal in this proceeding to extend the slow growth implementation provisions of Section 90.629 to SMR systems. CICS recommends that the Commission grant slow growth status to SMR systems when the SMR licensee proposes: (1) to re-use already licensed channels at new sites within the existing system "footprint" and (2) to implement a mechanism to hand-off calls from one cell to another within the footprint.

CICS also supports the Commission's proposal to extend the maximum permissible period for implementation of slow growth systems to five years, for both SMR and non-SMR systems. Likewise, CICS agrees with the proposal to delete the use of mobile loading as a qualifying factor in determining eligibility for slow growth status.

CICS supports elimination of the requirement that slow growth systems attain a minimum loading, at the five-year license renewal date, of 100 mobile units per channel. Finally, CICS supports elimination of the annual slow growth reporting requirement, provided that the Commission is able to establish a useful program for monitoring licensees' compliance with the construction benchmarks proposed in the slow growth implementation schedules.

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To: The Commission

COMMENTS
OF THE
COUNCIL OF INDEPENDENT COMMUNICATION SUPPLIERS

The Council of Independent Communication Suppliers ("CICS"), pursuant to the Federal Communications Commission's Notice of Proposed Rule Making in the above-referenced matter, hereby respectfully submits these Comments responsive to the Commission's proposal to modify the "slow growth" provisions of Part 90 of the rules.¹

I. PRELIMINARY STATEMENT

1. The Council of Independent Communication Suppliers is an unincorporated association of entities engaged in serving the needs of private radio eligibles, particularly those located in small and

¹ Notice of Proposed Rule Making (FCC 92-429), adopted September 9, 1992, summary published at 57 Fed. Reg. 49058 (October 29, 1992). By Commission Order (DA 92-1520), released November 4, 1992, the date for filing comments in this proceeding was extended from November 16, 1992 to November 30, 1992.

rural communities throughout the United States. CICS' membership is open to SMR operators, radio dealers, equipment suppliers, and consultants. CICS was formed to provide these entities a voice in the policy-making process governing use of the electromagnetic spectrum, especially spectrum allocated to the private land mobile radio services. CICS is an independent membership market council of the Industrial Telecommunications Association, Inc. ("ITA").

II. BACKGROUND

2. In this proceeding, the Commission is proposing to modify the rules governing slow growth systems in several important respects. First, the Commission proposes to extend the slow growth provisions of Section 90.629 to include, upon appropriate justification, Specialized Mobile Radio ("SMR") systems. Second, the Commission proposes to permit slow growth licensees to implement their systems over a period of five years rather than the three years now stipulated in the rules. Third, the proposal would remove the existing requirement that, in the absence of other justification, a proposed system must serve a minimum of 200 mobile units in order to qualify for slow growth status. Fourth, the Commission proposes to remove the current restriction that permits only local government agencies to rely on a multi-year budgeting and purchasing cycle as the basis for claiming slow growth status. Fifth, the Commission would clarify the rules to indicate that a licensee of a slow growth trunked system must achieve a minimum loading of 70 mobile units per channel during the initial license

term, rather than the current level of 100 mobile units per channel. Sixth, the proposal would eliminate the requirement that licensees of slow growth systems file annual reports with the Commission to document the progress in implementing their systems.

III. COMMENTS

3. At present, the Commission expends considerable time and effort evaluating requests for waivers filed by applicants who, though not eligible for slow growth status under existing rules, nonetheless require an extended period of time to implement their proposed systems. These requests for waivers have become somewhat commonplace. It would appear, therefore, that the Commission could improve the efficiency of its processes, and reduce its waiver workload, by incorporating greater flexibility into the slow growth rules.

4. As with any effort to modify the existing rules, the task before the Commission in this proceeding is to ensure that the rules to be developed are sufficiently flexible so as to encompass "deserving" cases without being so broad as to encourage abuse of the process. The Commission must determine the appropriate balance between promoting the development of large-scale systems that truly require a lengthy implementation period and allowing licensees to

claim slow growth status simply as a device for postponing full-scale implementation.

5. In developing these comments, CICS is motivated by three mutually supportive principles: (1) the public interest is best served by prompt implementation of all authorized radio systems, to the extent possible; (2) the public should not have to wait for five years to determine whether or not a licensee is able to make beneficial use of all authorized channels; and (3) consistent with the preceding two principles, slow growth status should be available to Part 90 licensees who truly find that their systems cannot be implemented without the benefit of an extended implementation schedule.

6. The difficulty in this proceeding rests in translating the foregoing three principles into a set of rules that will enable the Commission to distinguish between systems that warrant slow growth status and those that do not. CICS is pleased to participate in helping to devise a set of rules that will be responsive to the current regulatory environment. In an effort to assist the Commission in this work, CICS offers the following comments addressing specific proposals in this proceeding.

Extension of Slow Growth Status to SMR Systems

7. The recent proliferation of filings by SMR licensees seeking to establish wide-area, multichannel enhanced systems will likely continue. Many of the SMR proposals now pending before the Commission seek the same privileges currently available to public safety, industrial and land transportation applicants under the Commission's slow growth rules. Clearly, the SMR industry has reached the point in its development where licensees should be able to take advantage of the slow growth provisions, without the need to file waiver requests seeking extended implementation. CICS is, therefore, supportive of the Commission's proposal to extend the slow growth provisions to SMR applicants.

Criteria For Evaluating SMR Requests For Slow Growth Status

8. Having determined that SMR applicants should be eligible for slow growth status, CICS has attempted to develop some useful guidelines for identifying those SMR proposals that would qualify for extended implementation. This is not an easy question. Clearly, the standard single site five-channel trunked SMR system can and should be placed into operation within the customary one-year implementation period. Slow growth status should not, therefore, be granted to applicants proposing such systems.

9. For existing SMR systems, CICS advocates a two-part test to determine whether slow growth status is appropriate. Under this two-part test, CICS recommends that the Commission grant slow growth status in cases where an SMR licensee proposes to enhance an existing system by: (1) re-using already licensed channels at new sites within the existing system "footprint" and (2) implementing a mechanism to hand-off calls from one cell to another within the footprint. This test reflects CICS's view that slow growth status for SMR systems should be reserved for licensees proposing to convert to new technologies in a way that will improve the overall efficiency of previously licensed systems. CICS believes that this two-part test should be incorporated into Section 90.629 as a threshold standard for existing SMR licensees who request slow growth status for their modification proposals.

10. CICS does not believe there is a compelling need to develop slow growth criteria for applications proposing to establish new SMR systems. As the Commission has recognized in PR Docket No. 92-17 and elsewhere, there is a fundamental difference between an industrial/business eligible establishing a new land mobile communications network to serve its own internal requirements and an SMR proposing to establish a radio system based on its perception of a viable market for additional land mobile service in a community. As part of the planning process, the industrial or business applicant will likely have developed a

relatively precise estimate of the capacity required.² The future growth of SMR systems, on the other hand, is dependent on the specific market that ultimately develops for the service being proposed. It is therefore difficult for an applicant for a new SMR service to predict whether extended implementation will be necessary until a representative picture of actual market demand and subscriber requirements has emerged.

Extension of Slow Growth Period to A Maximum of Five Years

11. CICS agrees that the maximum permissible period for implementation of a slow growth system should be extended to five years for both SMR and non-SMR systems. However, consistent with the principles set forth in paragraph 6 above, the Commission should exercise its discretion before authorizing the full five-year implementation period. Though circumstances will differ widely from one applicant to another, there will certainly be situations in which three or four years will be more than adequate for implementation of a slow growth system. In such situations, the public interest would clearly be served by timely construction of the proposed system. CICS therefore urges the Commission to be

² In the Report and Order, PR Docket No. 92-17, adopted July 22, 1992, the Commission stated that, unlike SMR applicants, Industrial/Land Transportation applicants "do not compete for customers and should only apply for enough channels to satisfy their actual need." [Para. 11.]

vigilant in reviewing the requests received for slow growth status and, when appropriate, authorize a construction period which is less than the five-year maximum on a case-by-case basis.

Elimination of Mobile Loading As a Slow Growth Criterion

12. CICS agrees with the Commission's proposal to delete the use of mobile loading as a qualifying factor in determining eligibility for slow growth status. CICS agrees with the Commission that simply because a licensee anticipates having 200 or more mobile units on its system, the system should not necessarily receive slow growth status. The number of base station channels to be implemented and the number of transmitter sites planned for the system would represent, in most cases, more meaningful indicia of a bona fide slow growth system than the number of mobile units.³

³ Over the years, when enforcing the slow growth rules, the Commission has focused less on the number of mobile units implemented and more on the number of channels construction and in operation at the repeater sites. See, for example, the Commission's letter of July 11, 1988 to the Public Service Company of New Hampshire, which stated that "(a) primary concern is that the base facilities be constructed and operational on all fifteen channels within the first three years of the license term. A variation in the number of mobile units being implemented can be approved with proper justification." The Commission's proposal to delete the use of mobile units as a qualifying factor for slow growth status is consistent with this emphasis on base facilities rather than mobile units.

Reduction in the Minimum Loading for Slow Growth Systems

13. The Commission's current rules require that slow growth systems demonstrate greater efficiency, in terms of the five-year mobile loading level, than non-slow growth systems. This higher loading level was apparently imposed to discourage entities from frivolously requesting slow growth status. However, CICS does not believe there is any real justification for requiring slow growth systems to strive for greater channel efficiency than is required for other systems.

14. As the Commission noted in its proposal, mobile loading may not be a true indication of the need for slow growth status in any event. CICS therefore supports elimination of the requirement that slow growth systems attain a minimum loading, at the five-year license renewal date, of 100 mobile units per channel. There are certainly a number of situations where licensees require extended implementation for one reason or another but do not need a full complement of 100 mobile units per channel.⁴ There does not appear to be any public policy reason why slow growth licensees

⁴ CICS is aware that, in several instances, slow growth licensees, when faced with the need to demonstrate a minimum loading of 100 units per channel at the five-year mark, have simply decided to relinquish their slow growth classification before the date on which their first license term expires. In this way, licensees get the benefit of slow growth status for much of their license term, but are able to avoid being penalized by having to install 100 mobile units for each channel.

should be held to a higher mobile loading requirement than the operators of other systems licensed under Subpart S.

Elimination of Annual Slow Growth Reports

15. CICS supports the elimination of the annual slow growth system reporting requirement, provided that the Commission is able to conduct a responsible and vigorous program for monitoring licensees' compliance with the applicable construction benchmarks. If, for example, the Commission has authorized a four-year construction period for a licensee, there should be some sort of Section 308(b) inquiry program⁵ designed to monitor compliance with the slow growth schedule. CICS does not believe it serves the public interest for the Commission and the public to have to wait five years before discovering that the licensee of a slow growth system has not made any significant progress in implementing the licensed system. The spectrum is too valuable for the public to be deprived of its use for a full five years. Accordingly, CICS strongly urges the Commission to develop an effective program to monitor licensees' compliance with the applicable interim construction benchmarks. This monitoring program could perhaps be performed in conjunction with the Commission's current construction verification program for 800/900 MHz systems. With implementation

⁵ Section 308(b) of the Communications Act of 1934, as amended, 47 U.S.C. Section 308(b).

of such a program, CICS would support elimination of the annual report requirement.

Applicability to Already Authorized Systems

16. As the Commission will readily recognize, a number of public safety, industrial and land transportation systems have been authorized for slow growth implementation over the past five years. Many of these systems are still within the regular three-year implementation period. CICS urges the Commission to recognize that the changes which it adopts in this proceeding will be equally applicable, in many cases, to both existing slow growth licensees and to systems that may be licensed in the future. CICS believes it would be appropriate to apply the changes implemented in this proceeding retroactively to already licensed slow growth systems.

17. If the Commission does decide to grant a maximum of five years for implementation of slow growth systems, existing slow growth licensees should be afforded the opportunity to demonstrate that they qualify for a five-year implementation period. Likewise, existing licensees should not be burdened with the requirement to load their systems to 100 units per channel, if new licensees need only attain 70 units per channel. Similarly, if the annual report requirement is eliminated, all slow growth licensees should be exempt. In brief, all of the changes implemented in this

proceeding should be applied retroactively, to the extent possible.

IV. CONCLUSION

18. CICS is supportive of the main thrust of the Commission's proposals in this proceeding. CICS agrees that SMR systems should be eligible to apply for slow growth status under Section 90.629. However, CICS urges the Commission to impose a threshold standard, such as suggested above, in order to ensure that slow growth status is reserved for those SMR applicants whose proposed modifications are of sufficient scope and complexity. CICS favors extending the maximum period for implementation of slow growth systems to five years.

19. CICS also supports elimination of the current requirement that applicants for slow growth status demonstrate a requirement for a minimum of 200 mobile units. Similarly, CICS favors reducing the five-year mobile loading standard for slow growth systems from 100 units per channel to 70 units per channel. CICS also supports elimination of the annual reporting requirement for slow growth systems, as long as the Commission establishes an effective program to monitor compliance with the approved implementation schedules. Finally, CICS urges the Commission to apply all of the changes implemented in this proceeding to retroactively existing licensees.

WHEREFORE, THE PREMISES CONSIDERED, the Council of Independent Communication Suppliers respectfully submits the foregoing Comments in this matter and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

COUNCIL OF INDEPENDENT
COMMUNICATION SUPPLIERS

By: Andrew Daskalakis *JD*
Andrew Daskalakis
Chairman

Prepared by:

Mark E. Crosby
Frederick J. Day, Esq.
Council of Independent Communication Suppliers
1110 N. Glebe Road, Suite 500
Arlington, VA 22201-5720
(703) 528-5115

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